

E-filing

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ORIGINAL
FILED
JUL 20 2007
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ADR

RON ISSAC RICHARDSON,

Plaintiff,

vs.

EMILIO T. GONZALEZ, Director of U.S.
Department of Homeland Security, Citizenship
and Immigration Services; MICHAEL
CHERTOFF, U.S. Secretary of Homeland
Security,
Defendants.

Case No.:

007-03753

SI

COMPLAINT FOR WRIT OF
MANDAMUS, 28 U.S.C. § 1361

IMMIGRATION MATTER
C.I.S. FILE No. WAC 02-062-54120

**COMPLAINT FOR WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. § 1361
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Plaintiff Ron Issac Richardson respectfully submits this complaint for writ of mandamus by this Court to direct that the Defendant U.S. Citizenship and Immigration Services immediately transmit to the U.S. Department of Status the approved immigrant visa petition that he filed for his wife over five years ago. The Defendant, despite approving the petition, has sent it off for storage, ignoring the requests of Mr. Richardson, the requests of his attorney, and the requests of

**PETITION FOR HEARING ON NATURALIZATION PURSUANT TO 8 U.S.C. § 1447(b)
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1**

1 his Congressperson, that the C.I.S. comply with its plain statutory duty to forward the approved
2 petition to the U.S. Department of State, so that his wife can obtain an immigrant visa petition to
3 join him in the United States.

4 5 **JURISDICTION AND VENUE**

6 2. This court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
7 1331, (federal question), and 28 U.S.C. § 1361 (mandamus).

8 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e). Mr. Richardson sues
9 the Defendants in their official capacities as officers and employees of the United States
10 Citizenship and Immigration Service (C.I.S.). A substantial portion of the events giving rise to
11 this Petition occurred in Oakland, California, from where Mr. Richardson's Immigrant Visa
12 petitions were sent and where Mr. Richardson lives. Mr. Richardson resides in Oakland,
13 California, in Alameda County.

14 15 **INTRADISTRICT ASSIGNMENT**

16 4. The events giving rise to this claim have occurred in the county of Alameda, and the
17 Petitioner's residence is within the county of Alameda.

18 19 **PARTIES**

20 5. Petitioner is a citizen of the United States, a veteran of the Vietnam War, who resides
21 in Oakland, California, within the jurisdiction of this Court.

22 6. The Defendant Emilio T. Gonzalez is the Director of the CIS. Mr. Gonzalez is
23 responsible for the processing and determination of immigrant visa petitions for the immigration
24 of relatives of United States citizens. Mr. Gonzalez is sued in his official capacity

25 7. The Defendant Michael Chertoff is the U.S. Secretary of Homeland Security, which
26 encompasses the CIS. Mr. Chertoff is ultimately responsible for the administration of all
27 immigration and naturalization laws, including the processing and determination of applications
28 for naturalization. Mr. Chertoff is sued in his official capacity.

CAUSE OF ACTION

8. Mr. Richardson submitted three Immigrant Visa Petitions, for his wife, Pei Feng Chen and two step-children by that wife, Zilong Yi and Ziqin Ye, all citizens of China, on December 11, 2001. The C.I.S.'s predecessor Immigration and Naturalization Service approved the three immigrant visa petitions on July 15, 2003 and forwarded them to the United States Department of State. A copy of Mr. Richardson's I-130 visa petition filed for his wife, Pei Feng Chen, signed on Nov. 5, 2001, is attached as Exhibit 1. A copy of Mrs. Chen's Form I-797, July 15, 2003 Approval Notice for that visa petition, is attached as Exhibit 2.

9. The U.S. Department of State then did its visa processing, eventually setting an immigrant visa interview date for the wife at the U.S. consulate at Guangzhou, China. On November 9, 2004, the consular officer interviewed Mr. Richardson's wife, Pei Feng Chen, but was not satisfied that the marriage was genuine, so, on Feb. 23, 2005, the consulate returned the three approved immigrant visa petitions to the C.I.S. for further review and action.

10. The C.I.S. on Oct. 25, 2005, notified Mr. Richardson of its intent to revoke the approved petition of one of the step-children, his stepdaughter Ziqin Ye, giving him 90 days to submit evidence to establish that the marriage of Mr. Richardson the that beneficiary's mother, Pei Feng Chen, was genuine. Mr. Richardson then retained his current attorney, and they submitted in response 17 sets of documentation of the relationship, including copies of passport stamps, dozens of photos verifying Mr. Richardson's several trips to stay with his family in China, sworn statements of his U.S. friends and relatives, telephone bills documenting hundreds of calls to China, proof of his financial support of his family in China, newspaper coverage of the anniversary party in China, etc. With the evidence, through counsel, Mr. Richardson requested that the C.I.S. consolidate its review of the three petitions, since the issue for each was the same – the bona fides of the marriage of Pei Feng Chen and Ron Issac Richardson. While ignoring this request for efficiency, after review of this evidence, the C.I.S. did, on , Dec. 11, 2005, reaffirm its finding that the petition for the stepdaughter was properly approved, and forwarded the re-affirmed petition to the U.S. Department of State. The stepdaughter Ziqin Ye, is now again

1 processing an immigrant visa application through that agency. The same demands, voluminous
2 response, and eventual C.I.S. reaffirmation of the approval of the petition for the stepson, Zilong
3 Ye, followed thereafter, and he too is now pursuing his immigrant visa through the U.S.
4 Department of State.

5 11. On July 28, 2006, the C.I.S. notified Mr. Richardson of its intent to revoke the
6 approved petition of his wife, Pei Feng Chen. Mr. Richardson then, for the third time, submitted
7 in response voluminous documentation of the relationship, including copies of passport stamps,
8 dozens of photos verifying Mr. Richardson's several trips to stay with his family in China, sworn
9 statements of his U.S. friends and relatives, telephone bills documenting hundreds of calls to
10 China, proof of his financial support of his family in China, newspaper coverage of the
11 anniversary party in China, etc. The C.I.S. did then, on November 8, 2006, reaffirm its finding
12 that the petition was properly approved, and said in its approval notice that it had forwarded the
13 re-affirmed petition to the U.S. Department of State. See attached copy, Exhibit 3. Further, the
14 online status verification system of the C.I.S. also notes that, on November 8, 2006, the petition
15 had been approved and sent to the Department of State. A copy of the printout of that
16 information is attached as Exhibit 4.

17 12. After months without action from the Department of State, counsel for Mr.
18 Richardson inquired with the Department of State, and was informed by the National Visa
19 Center of the U.S. Department of State that the re-affirmed petition for his wife had never been
20 received from the C.I.S. After further fruitless inquiries to the C.I.S. California Service Center, a
21 liaison inquiry through the American Immigration Lawyers Association to the California Service
22 Center brought a response from the agency saying that it had not in fact sent the approved
23 petition to the U.S. Department of State, that it had instead sent it to another C.I.S. office, called
24 the "national benefit center", located in Lee's Summit, Missouri, and that retrieving it from that
25 office would be the problem of Mr. Richardson. A copy of that inquiry and response is attached
26 as Exhibit 5. Since that information was provided, counsel for Mr. Richardson has written
27 repeatedly to that C.I.S.' "national benefit center", without receiving any reply. The office of
28 Congresswoman Barbara Lee has also written to them, also without reply or action. Nobody at

1 the C.I.S. has taken any action to resolve their error, and there is no reason to believe that they
 2 ever will. It is not clear that the C.I.S. knows where it has put file, but it is clear that they are
 3 refusing to look for it. The C.I.S. provides no options to the petitioner for any further measures to
 4 exhaust, no administrative remedies exist for the C.I.S. failure to act.

5 13. The C.I.S. has a statutory, nondiscretionary duty, to forward an approved visa petition
 6 to the U.S. Department of State, as provided at 8 U.S.C. § 1154(b), "...the Attorney General
 7 shall, if he determines that the facts stated in the petition are true and that the alien in behalf of
 8 whom the petition is made is an immediate relative specified in section 201(b) or is eligible for
 9 preference under subsection (a) or (b) of section 203, approve the petition and forward one copy
 10 thereof to the Department of State."

11 14. The C.I.S. is required to act within a reasonable period, by the Administrative
 12 Procedure Act, 5 U.S.C. § 555(b), "With due regard for the convenience and necessity of the
 13 parties or their representatives and within a reasonable time, each agency shall proceed to
 14 conclude a matter presented to it."

15 15. The C.I.S. has failed to act to forward the approved petition of the Plaintiff for his
 16 wife to the Department of State within a reasonable period, or within any foreseeable period.

17 16. The indifferent disregard of its statutory duty by the C.I.S. has caused and continues
 18 to cause Mr. Richardson constant mental anguish and expense, though the ever lengthening
 19 period of over five years separation from his wife and stepchildren.

20 21 22 **PRAYER FOR RELIEF**

23 Petitioner respectfully requests the following relief:

24 (a) That this Court (1) enter an order directing the C.I.S. to forward the approved immigrant
 25 visa petition filed by the Plaintiff's to the United States Department of State's National
 26 Visa Center without any further delay.

27 (b) That this Court issue an order declaring that C.I.S.' delay in forwarding the Plaintiff's
 28

1 approved visa petition for his wife to be unreasonable and in violation of agency's
2 obligations under the Immigration and Nationality Act. That this Court award Petitioner
3 reasonable attorney's fees under the Equal Access to Justice Act; and
4 (c) That this Court award such other relief at law and in equity as justice may require.
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8 Dated: July 20, 2007
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11 Respectfully submitted,
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15 By: Robert Baizer
16

17 Robert Baizer
18 483 Ninth St., Ste. 200
19 Oakland, CA 94607
20 Attorney for Petitioner
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U.S. Department of Justice
Immigration and Naturalization Service (INS)

OMB #1115-0054
Petition for Alien Relative

DO NOT WRITE IN THIS BLOCK - FOR EXAMINING OFFICE ONLY

Case ID#	Action Stamp	Fee Stamp
As		
G-28 or Volag #		
Section of Law: <input type="checkbox"/> 201 (b) spouse <input type="checkbox"/> 203 (a)(1) <input type="checkbox"/> 201 (b) child <input type="checkbox"/> 203 (a)(2) <input type="checkbox"/> 201 (b) parent <input type="checkbox"/> 203 (a)(4) <input type="checkbox"/> 203 (a)(5)	Petition was filed on: (priority date) <input type="checkbox"/> Personal Interview <input type="checkbox"/> Previously Forwarded <input type="checkbox"/> Pet Ben "A" File Reviewed <input type="checkbox"/> Stateside Criteria <input type="checkbox"/> Field Investigations <input type="checkbox"/> I-485 Simultaneously <input type="checkbox"/> 204 (a)(2)(A) Resolved <input type="checkbox"/> 204 (h) Resolved	
AM CON:		
Remarks:		

A. Relationship

1. The alien relative is my ☒ Husband/Wife ☐ Parent ☐ Brother/Sister ☐ Child ☐ Yes ☒ No
2. Are you related by adoption? ☐ Yes ☒ No
3. Did you gain permanent residence through adoption? ☐ Yes ☒ No

B. Information about you

1. Name (Family name in CAPS) (First) (Middle)
 RICHARDSON, RONALD ISAAC

2. Address (Number and Street) (Apartment Number)
 4770 REDDING STREET

(Town or City) (State/Country) (ZIP/Postal Code)
 OAKLAND, CA 94619

3. Place of Birth (Town or City) (State/Country)
 BOSTON MASS, USA

4. Date of Birth (Mo/Day/Yr) 5. Sex ☒ Male ☐ Female 6. Marital Status ☒ Married ☐ Single ☐ Widowed ☐ Divorced
 6/14/1943

7. Other Names Used (including maiden name)
 RONALD I. RICHARDSON

8. Date and Place of Present Marriage (if married)
 9/28/2001, BEIHAI, CHINA

9. Social Security Number 10. Alien Registration Number (if any)
 021 32 9781 None

11. Names of Prior Husbands/Wives 12. Date(s) Marriage(s) Ended
 HUBBES, PENELOPE 7/9/1991

C. Information about your alien relative

1. Name (Family name in CAPS) (First) (Middle)
 CHEN, PEI FENG

2. Address (Number and Street) (Apartment Number)
 RM 305, BLD 15, QIAOGANG

(Town or City) (State/Country) (ZIP/Postal Code)
 BEIHAI GUANGXI, CHINA

3. Place of Birth (Town or City) (State/Country)
 QUANGHINH, VIETNAM

4. Date of Birth (Mo/Day/Yr) 5. Sex ☐ Male ☒ Female 6. Marital Status ☒ Married ☐ Single ☐ Widowed ☐ Divorced
 2/08/1960

7. Other Names Used (including maiden name)
 TRAN, BUI PHUNG

8. Date and Place of Present Marriage (if married)
 9/28/2001, BEIHAI, CHINA

9. Social Security Number 10. Alien Registration Number (if any)
 NONE NONE

11. Names of Prior Husbands/Wives 12. Date(s) Marriage(s) Ended
 YE, FAHUI 6/26/99 (DECEASED)

13. If you are a U.S. citizen, complete the following:

- My citizenship was acquired through (check one)
☒ Birth in the U.S.
☐ Naturalization (Give number of certificate, date and place it was issued)
- ☐ Parents
 Have you obtained a certificate of citizenship in your own name?
☐ Yes ☐ No
 If "Yes", give number of certificate, date and place it was issued

14a. If you are a lawful permanent resident alien, complete the following:

Date and place of admission for, or adjustment to, lawful permanent residence, and class of admission

N/A

14b. Did you gain permanent resident status through marriage to a United States citizen or lawful permanent resident? ☐ Yes ☒ No

13. Has your relative ever been in the U.S.?

- ☐ Yes ☒ No

14. If your relative is currently in the U.S., complete the following: He or she last arrived as a (visitor, student, slowaway, without inspection, etc.)
 N/A

Arrival/Departure Record (I-94) Number Date arrived (Month/Day/Year)

Date authorized stay expired, or will expire, as shown on Form I-94 or I-95

N/A

15. Name and address of present employer (if any)

N/A

Date this employment began (Month/Day/Year)

16. Has your relative ever been under immigration proceedings?

- ☐ Yes ☒ No Where When
☐ Exclusion ☐ Deportation ☐ Reversion ☐ Judicial Proceedings

EXHIBIT I.

INITIAL RECEIPT

RESUBMITTED

RELOCATED

COMPLETED

Rec'd Sent Approved Denied Returned

Information about your alien relative

16. List husband/wife and all children of your relative (if your relative is your husband/wife, list only his or her children).

(Name)	(Relationship)	(Date of Birth)	(Country of Birth)
YE, ZIQIN	DAUGHTER	12/28/1986	CHINA
YE, ZILONG	SON	10/22/1985	CHINA

17. Address in the United States where your relative intends to live

(Number and Street)	(Town or City)	(State)
4770 REDDING STREET	OAKLAND	CA

18. Your relative's address abroad

(Number and Street)	(Town or City)	(Province)	(Country)	(Phone Number)
RM305, BLD15, QIAOGANG; BEIHAI	GUANGXI	CHINA		

19. If your relative's native alphabet is other than Roman letters, write his or her name and address abroad in the native alphabet:

(Name)	(Number and Street)	(Town or City)	(Province)	(Country)
陈佩凤	广西	北海市银海区侨港镇15幢305号	中国	

20. If filing for your husband/wife, give last address at which you both lived together:

(Name)	(Number and Street)	(Town or City)	(Province)	(Country)	From (Month) (Year)	To (Month) (Year)
SEE ITEM # 18						

21. Check the appropriate box below and give the information required for the box you checked:

☒ Your relative will apply for a visa abroad at the American Consulate in GUANGZHOU, CHINA

(City) (Country)

☐ Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the Immigration and Naturalization Service at _____ If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American Consulate in _____

(City) (State) (City) (Country)

(Designation of a consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that consulate. Acceptance is at the discretion of the designated consulate.)

D. Other Information

1. If separate petitions are also being submitted for other relatives, give names of each and relationship.

YE, ZIQIN (Step Daughter) & YE, ZILONG (Step Son)

2. Have you ever filed a petition for this or any other alien before? ☐ Yes ☒ No

If "Yes," give name, place and date of filing, and result.

Warning: The INS investigates claimed relationships and verifies the validity of documents. The INS seeks criminal prosecutions when family relationships are falsified to obtain visas.

Penalties: You may, by law be imprisoned for not more than five years, or fined \$250,000, or both, for entering into marriage contract for the purpose of evading any provision of the immigration laws and you may be fined up to \$10,000 or imprisoned up to five years or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

My Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit that I am seeking.

Signature [Signature] Date 11/5/2001 Phone Number (510) 261-9682

Signature of Person Preparing Form If Other than Above

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name _____ (Address) _____ (Signature) _____ (Date) _____

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Immigration and Naturalization Service

Notice of Action



RECEIPT NUMBER WAC-02-062-54120		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN
RECEIPT DATE December 11, 2001	PRIORITY DATE December 11, 2001	PETITIONER RICHARDSON, RON I.
NOTICE DATE July 15, 2003	PAGE 1 of 1	BENEFICIARY CHEN, PEI FENG
RON I. RICHARDSON 4770 REDDING STREET OAKLAND CA 94619		Notice Type: Approval Notice Section: Husband or wife of U.S. Citizen, 201(b) INA

The above petition has been approved. We have sent the original visa petition to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.

The NVC will contact the person for whom you are petitioning (beneficiary) concerning further immigrant visa processing steps.

If you have any questions about visa issuance, please contact the NVC directly. However, please allow at least 90 days before calling the NVC if your beneficiary has not received correspondence from the NVC. The telephone number of the NVC is (603) 334-0700.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
CALIFORNIA SERVICE CENTER
P. O. BOX 30111
LAGUNA NIGUEL CA 92607-0111
Customer Service Telephone: (800) 375-5283



EXHIBIT 2.

Department of Homeland Security
U.S. Citizenship and Immigration Service

I-797C, Notice of Action



RECEIPT NUMBER WAC-02-062-54120		CASE TYPE I130 IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN
RECEIPT DATE December 11, 2001	PRIORITY DATE December 11, 2001	PETITIONER RICHARDSON, RON I.
NOTICE DATE November 8, 2006	PAGE 1 of 1	
ROBERT BAIZER LAW OFFICE OF ROBERT BAIZER RE: RON ISAAC RICHARDSON 469 NINTH ST STE 200 OAKLAND CA 94607		

This is to advise you that we have reaffirmed our previous decision on the above application or petition which the Department of State had previously returned for review. We have forwarded the case back to the Department of State for action.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P. O. BOX 30111
LAGUNA NIGUEL CA 92607-0111
Customer Service Telephone: (800) 375-5283



EXHIBIT 3

Case Status Search

Receipt Number: WAC0206254120

Application Type: I130, IMMIGRANT PETITION FOR RELATIVE, FIANCE(E), OR ORPHAN

Current Status:

Notice reaffirming approval mailed to you and case sent to the Department of State.

On November 8, 2006, we mailed a notice to you reaffirming the approval of this case and returned the case to the Department of State for visa processing. For more information, please contact them directly.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).

EXHIBIT 4

Main Identity

From: "Maile M. Hirota" <maile@loio.com>
To: <baizer@visalawyer.net>
Sent: Thursday, February 15, 2007 7:47 PM
Subject: CSC inquiry response

Dear Robert,

CSC's response to your inquiry is at the bottom in red.

Aloha,
 Maile Hirota
 AILA/CSC Division XII liaison

California Service Center (CSC)			
Form Type Information	Petitioner/Principal & Beneficiary/Derivatives Information	AILA Member G-28 Attorney Information	Additional Case Information
Record Number: 558-200711 Form Type: I-130: Immediate relative Form Type Other: Receipt Date: 12/11/2003 I-824: I-824 Receipt:	Principal: Name: Ron Richardson Date of Birth: 6/14/1943 A Number: Receipt Number: WAC0206254120 Address: Beneficiary A: Name: Pei Feng Chen A Number: none Receipt Number: WAC0206254120 Date of Birth: 2/8/1960 Beneficiary B: Name: A Number: Receipt Number: Date of Birth: Beneficiary C: Name: A Number: Receipt Number: Date of Birth:	I am the G-28 Attorney? Yes Member No.: 135 Name: Robert Baizer E-mail: <u>baizer@visalawyer.net</u> Phone: 510 663-3444 Fax: 510 839-1622 Firm: Law Office of Robert Baizer Address:	Is I-485 Current? No I-485 Receipt: Priority Date: Priority Classification: Priority Country: Was this an Indirect Filing Case? No Date of the Initial Filing: Filing Office: Notice of transfer to another office? No Date of transfer: Office transferred to:
DivXII	Date Contacted	Receive a Response?	Description
DivXII - A	5/3/2006	Response: No ; Action: No	
DivXII - B	6/1/2006	Response: Yes ; Action: No	Finally recognized ma as the G-28 attorney.
RFE	Date you responded:	Was there an RFE?	Description
RFE - A	8/3/2006	Yes	Yes - I-797C says the CSC reaffirmed previous approval and sent to Dept. of State, as of 11/8/06. Dept of State says it

EXHIBIT 5

2/20/2007

was never received by them.

Problem:

» Case ongoing over 5 years. I-130 for wife, approved, sent to Guangzhou with those of 2 kids. After IV interview, returned to CIS for revocation. Received at CSC 8/10/2005. One child's re-affirmed 11/22/05, another 8/24/06, and finally this one, for the wife, on 11/8/06. Now, the NVC has both children's I-130's, but has not received the wife/mother's. Originally, we discovered that the wife's had mistakenly been sent to the National Record Center. The NVC suggests we ask the CIS where the I-130 is. We wonder whether it again has been sent to the record center. NOTE: The receipt date is 12/11/2001. Your online form does not even go back that far.

Committee Comments:

» submitted to CSC 1/22/07

Government Comments:

» The I-130 has been consolidated into the beneficiary's A-file which is currently located at the National Benefits Center. Please contact the National Benefits Center for resolution of this inquiry.

Record Number: 558-200711

Maile M. Hirota, Esq.
Lynch Ichida Thompson Kim & Hirota
1132 Bishop Street, Suite 1405
Honolulu, HI 96813
Telephone: (808) 528-0100
Fax: (808) 528-4997
Email: maile@loio.com

Contact Congress at www.aila.org to support positive immigration reform.

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